Supreme Court, U.S.
FILED
OCT 0 8 2003
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No. 03-287

In The Supreme Court Of The United States

REGINALD WILKINSON, Director, et al.,
Petitioners,

v.

WILLIAM DWIGHT DOTSON, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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15-11

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

A. This case squarely presents the question of what it means to "imply the invalidity" of a parole decision, under *Balisok*, and the Sixth Circuit was plainly divided on that legal issue 2

B. The circuits are split over what it means to "imply the invalidity" of a parole decision, and that split is a matter of law, not a result of factual differences. 8

CONCLUSION 10

TABLE OF AUTHORITIES

Page

Cases

Anyanwutaku v. Moore,
151 F.3d 1053 (D.C. Cir. 1998) 8

Butterfield v. Bail,
120 F.3d 1023 (9th Cir. 1997) 8,9

Crow v. Penry,
102 F.3d 1086 (10th Cir. 1996) 8

Dotson v. Wilkinson,
300 F.3d 661 (6th Cir. 2002) 7

Dotson v. Wilkinson,
329 F.3d 463 (6th Cir. 2003) ..... *passim*

Dumas v. State,
654 So. 2d 48 (Ala. Crim. App. 1994) 6

Edwards v. Balisok,
520 U.S. 641 (1997) ..... *passim*

Heck v. Humphrey,
512 U.S. 477 (1994) ..... *passim*

Johnson v. Litscher,
26 F. 3d 826 (7th Cir. 2001) 8

Kingsley v. Bureau of Prisons,
937 F.2d 26 (2d Cir. 1991) 6

Mahers v. State,
437 N.W. 2d 565 (Iowa 1989) 6

Spencer v. Kemna,
523 U.S. 1 (1998) 2,3

Vann v. Oklahoma State Bureau of Investigation,
28 Fed. Appx. 861 (10th Cir. 2001) 8,10

Waeckerle v. State of Oklahoma,
37 Fed. Appx. 395 (10th Cir. 2002) 10

Statutes

42 U.S.C. § 1983 ..... *passim*

INTRODUCTION

Petitioners, Ohio prison officials, along with sixteen *amici* States, ask the Court to resolve lower-court confusion regarding the scope of the "favorable termination requirement" of *Heck v. Humphrey*, 512 U.S. 477 (1994), which bars a prisoners from filing a claim under 42 U.S.C. § 1983 if success on the claim would "necessarily imply the invalidity of his conviction or sentence . . . unless . . . the conviction or sentence has already been invalidated." *Id.* at 487. Specifically, Petitioners seek review of a Sixth Circuit decision that concluded that *Heck* does not bar claims challenging parole procedures where success on those claims would not necessarily guarantee speedier release for the prisoner, but instead would give him only a new parole hearing. *Dotson v. Wilkinson*, 329 F.3d 463 (6th Cir. 2003) (en banc), Pet. App. 4a, 17a.

Respondents' brief shows precisely why review is needed here, as their entire argument rests upon the same mistaken premise adopted by the Sixth Circuit below and by other errant circuits: they assume that a State's parole decision is somehow not "invalidated" by a federal court when a federal court (1) declares that the procedures at a parole hearing were unconstitutional, and in effect (2) vacates the resulting denial of parole and orders the State to give a prisoner a new hearing with better procedures. Such a result does not constitute "invalidation" of the first hearing, according to Respondents—and according to the Sixth Circuit and like-minded circuits—because the prisoner might still be denied parole after a second hearing, so the prisoner will not necessarily get out of prison earlier.

In sharp contrast to that narrow view of "invalidation," Petitioners believe—as some circuits do, and as the dissent below does—that this Court adopted a different rule of law in *Edwards v. Balisok*, 520 U.S. 641 (1997). In

our view, *Balisok* means that a State parole hearing would be "invalidated" if it were vacated, even though a prisoner purports to challenge only the "parole procedures, not the parole decision" of the first hearing, and even though a new hearing might reach the same result of denial-of-parole. It does not matter, in our view, that a prisoner might not "necessarily" achieve earlier *release*. If a parole decision is declared inoperative—*i.e.*, is *invalidated*—then a prisoner achieves a result that he should not be allowed to achieve in a Section 1983 claim, so any Section 1983 claim aimed at such a result should be barred by *Heck* and *Balisok*.

But more important, whatever side has the better view of what the Court meant by "invalidate" in *Balisok*, that legal dispute is a live one, both in this case and in the circuits, and it warrants review. Respondents seek, at every turn, to sidestep this legal dispute over the meaning of "invalidation." They fail to acknowledge how that legal question divided the court below, and how that legal question—not mere factual differences or a red-herring process-versus-result distinction—divides the circuits. Once this critical question of "invalidation" is brought back into focus, then the lower court's conflict with *Balisok*, and the circuit split, shine brightly, and the attendant need for certiorari is visible.

A. This case squarely presents the question of what it means to "imply the invalidity" of a parole decision, under *Balisok*, and the Sixth Circuit was plainly divided on that legal issue.

Respondents insist that this case involves a factbound application of settled law. In their view, the settled law is straightforward: if "a prisoner brings a § 1983 suit 'for using the wrong [parole] procedures, not for reaching the wrong result, and if that procedural defect did not necessarily imply the invalidity of the [parole decision],' then the lawsuit is not barred." Brief in Opposition ("Opp.") at 1, quoting *Spencer*

v. Kemna, 523 U.S. 1, 17 (1998). This rule has been uniformly applied in this Court and in the circuits, they say, and the different results below are explained entirely by fact-specific differences among prisoners' claims. Indeed, they argue that factual issues even explain away the division in the court below, as "even dissenting judges in [Respondent] Johnson's case did not proffer a different rule of law, but rather interpreted the factual allegations of Johnson's claim differently" from the majority. Opp. at 2.

Respondents' entire approach, however, simply leaps over the critical question presented in this case: what *legal standard* determines whether a claim "implies the invalidity" of a parole decision? That is undoubtedly a question of law, not fact, and it is the *that* question—not a difference in factual characterizations, nor any difference between challenges to parole "procedures" as opposed to parole "decisions"—that deeply divided the court below. Indeed, both the majority and dissenting opinions showed that they viewed their own internal debate, as well as the debate in the circuits, as a legal question centered on the meaning of this Court's precedent. *See* Pet. App. 8a ("somewhat confusing Supreme Court cases govern the issue here, and our sister circuits have struggled with application of their holdings"); Pet. App. 20a-21a ("the majority opinion has adopted an overly broad 'earlier release' test"); Pet. App. 25a ("I believe that the majority has adopted a broad-based rule that was rejected by the Supreme Court in *Edwards [v. Balisok]*.").

The majority and dissent split over what *Balisok* means, and thus split over what *type* of § 1983 claims trigger the *Heck* bar. In particular, they disagreed regarding what types of claims would, if successful, "necessarily imply the invalidity of [the prisoner's] conviction or sentence." The majority adopted a bright-line, but erroneous, rule that allows a prisoner to use § 1983 to challenge parole procedures, including the procedures used in his particular parole

hearing, as long as the prisoner will not *automatically obtain earlier release* as a result of winning his § 1983 suit. Pet. App. 17a ("A successful challenge will only 'necessarily imply' the invalidity of a prisoner's conviction or sentence if it will inevitably or automatically result in earlier release.") This "earlier release" test means that the *Heck* bar does not prohibit a claim such as Respondent Johnson's, even though he seeks to *void the decision denying him parole*. *See* Pet. App. 18a ("the consequence [of success on his claim] will be a new discretionary parole hearing.")

The majority relied on two key principles—both issues of law, not factbound details—to conclude that a suit that seeks to set aside a parole denial is not one seeking to "invalidate," or to imply the invalidity of, a state parole decision. First, the court stressed that parole is a *discretionary* matter in Ohio, so the new hearing might reach the same result, leaving the prisoner's term of confinement unchanged. Pet. App. 17a. Second, the court said that *Heck* simply does not protect a "decision of the Ohio Parole Board," or of any administrative body, from invalidation, as the court held that *Heck's* protection of a State's "'judgment' properly refers only to the decision of a convicting court." Pet. App. 35a n.2.

The dissent strongly, and rightly, disagreed with the majority's "earlier release" test and with both of the above corollary principles, because the majority's view, on all those scores, conflicts head-on with *Balisok*. The dissent said that the majority "overreaches when it suggests that, because Johnson's and Dotson's procedural challenges will result in nothing more than a new hearing, their claims must be allowed to proceed." Pet. App. 30a. The dissent explained that the *Heck* bar is not triggered only by claims for automatic, earlier release; instead, the bar is triggered whenever a prisoner asks a federal court to "'set aside' or 'reverse' the denial of parole in an individual case." Pet.

App. 28a. As the dissent noted, under *Balisok*, it is the impact on the judgment, not on the term of confinement, that matters. Pet. App. 21a.

The dissent explained precisely how the majority's opinion conflicted, in several ways, with *Balisok*. First, *Balisok* dealt "with the judgment of an administrative body," Pet. App. 24a, as the prisoner in that case sought to challenge the *administrative* disciplinary procedures that the *prison system*—not a sentencing court—used to deprive him of good-time credits. *See Balisok*, 520 U.S. at 643, 648. The Court, of course, barred the claim in *Balisok*, protecting that administrative decision. Second, *Balisok* also rejected the other basis for the Sixth Circuit's ruling: the notion that a discretionary decision is not "necessarily" invalidated when it is set aside due to procedural flaws, because the discretionary process might reach the same result after a new hearing. As the dissent explained, a "similar argument was advanced" in *Balisok*, "to the effect that a ruling in [the prisoner's] favor on his § 1983 procedural attack would not necessarily imply the invalidity of the loss of his good-time credits because the Washington courts could still uphold the administrative determination once the procedural errors were corrected." Pet. App. 24a, citing *Balisok*, 520 U.S. at 647. "But the Court clearly rejected this argument" in *Balisok*. Pet. App. 24a, citing *Balisok*, 520 U.S. at 648. Indeed, if the majority were right, then it is hard to see how *any* parole decision in Ohio—or in any State that has a discretionary system, as most do—will be protected by the *Heck* bar, as prisoners will always get a new hearing with an indeterminate outcome. Pet. App. 31a.

Most important, just as *Balisok* had already rejected the twin underpinnings of the Sixth Circuit's reasoning, so, too, does *Balisok* conflict with the Sixth Circuit's ultimate holding—that prisoners may use § 1983 to attack a parole decision, as long as they ask for a "new hearing" and not a

"reversal" of the decision. The prisoner in *Balisok* was barred from attacking the deprivation of his good-time credits even though a successful attack would gain him a *new hearing*, not necessarily a reinstatement of the disputed credits. *Balisok* explained that the prisoner's claim, if successful, would "necessarily imply the invalidity of the deprivation of his good-time credits," and this was so because his complaint was the type that would entitle him to either reinstatement of the credits *or a new hearing*. *Balisok*, 520 U.S. at 647 ("This is an obvious procedural defect, and state and federal courts have reinstated good-time credits (*absent a new hearing*) when it is established.") (emphasis added), citing, *e.g.*, *Kingsley v. Bureau of Prisons*, 937 F.2d 26, 27, 31 (2d Cir. 1991). Not only did the Court expressly refer to a "new hearing" as a likely outcome of such claims, but it also cited, in support of this proposition, cases such as *Kingsley*—a case in which a federal court ordered a prison warden to reinstate a prisoner's good-time credits "unless a new hearing is held at which" the procedural defects at issue were cured. *Kingsley*, 937 F.2d at 27; *see also Dumas v. State*, 654 So. 2d 48, 49 (Ala. Crim. App. 1994) (prisoner was "entitled to a new disciplinary hearing"); *Mahers v. State*, 437 N.W.2d 565, 568-69 (Iowa 1989) (ordering rehearing while stressing that new hearing might reach same result).

Thus, in the dissent's view (and in ours), Johnson seeks to achieve exactly the type of relief that *Balisok* foreclosed: a declaration that his denial-of-parole hearing was invalid, and a new hearing with different procedures. The dissent did not "interpret[] the factual allegations of Johnson's claim differently" from the majority, *see* Opp. at 2, as both sides understood that Johnson wanted to void the

result of his hearing and get a new one. They disagreed on *whether Balisok* allows such attacks.[1]

In sum, the question is *whether* claims demanding a new hearing "necessarily imply the invalidation" of the first hearing, and should thus be barred by *Heck*. Petitioners and the dissent believe that the answer is clearly yes, while the Sixth Circuit has held that the answer is no. But whoever is right on that score, Respondents are surely wrong to deny that the question is on the table.[2]

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[1] The majority and the dissent also split over the legal rule to apply to Dotson's claim, as the dissent said that the majority applied the wrong rule to both Dotson and Johnson. Pet. App. 23a, 25a. However, the dissent concluded that a "proper application" of this Court's precedents "coincides with the majority's decision on Dotson's claim." Pet. App. 30a. That is because the dissent believed that Dotson did not seek to undo his 1995 denial of parole, and that he wished only to challenge the procedures to be used in the future, in his already-scheduled 2005 hearing. Pet. App. 29a. But Dotson's complaint plainly said otherwise, as he prayed for "a prompt and immediate parole hearing." *See also Dotson v. Wilkinson*, 300 F.3d 661, 663 (6th Cir. 2002) (panel decision), Pet. App. 40a (noting that Dotson sought "an injunction ordering a new eligibility hearing."). Thus, this corrected characterization of Dotson's claim should bar his suit under the dissent's (and *Balisok's*) rule of law. In addition, to the extent that Dotson's claim arguably differs from Johnson's, the presence of both makes this an ideal candidate for review, as the Court could address the issues raised in both.

[2] While Respondents' attempt to sidestep the legal debate over "invalidity" suffuses their entire brief, their avoidance of the question is perhaps best captured in their restatement of the question(s) presented. They frame the issue as whether a prisoner can bring a § 1983 claim challenging the procedures at his parole proceeding "*where* such a challenge, if successful, *would neither invalidate* a parole decision" nor affect the duration of the prisoner's sentence. That "question," however, assumes the answer to our second question, which asks *whether* a federal court invalidates a parole decision when it vacates, or declares void, a first parole decision, and orders a new, second proceeding.

B. The circuits are split over what it means to "imply the invalidity" of a parole decision, and that split is a matter of law, not a result of factual differences.

Just as the majority and dissent split over the legal question of whether a prisoner may use a § 1983 claim to vacate a parole decision and demand a new hearing, so, too, are the circuits split along the same axis. Some circuits, such as the Sixth Circuit below, apply a "guaranteed early release test." These circuits allow such claims to proceed as long as the prisoner seeks only a new hearing, so that the claim will not "automatically result in [] a speedier release from prison." *Anyanwutaku v. Moore*, 151 F.3d 1053, 1057 (D.C. Cir. 1998); *Johnson v. Litscher*, 260 F.3d 826, 831 (7th Cir. 2001) (claim would "not necessarily" result in restoration of good-time credits and earlier release).

In sharp contrast, other circuits forbid any claims that challenge parole decisions, even if those claims are framed as challenges to the "procedure," not the "result," of the decision, and even if success on the claim would not necessarily lead to earlier release. *See, e.g., Butterfield v. Bail*, 120 F.3d 1023, 1024-25 (9th Cir. 1997); *Vann v. Oklahoma State Bureau of Investigation*, 28 Fed. Appx. 861 (10th Cir. 2001); *Crow v. Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996) (*Heck* "applies to [all] proceedings that call into question the fact or duration of parole or probation").

Respondents try to explain away this split by alleging that factbound differences account for the different results, and by arguing that the conflicting decisions are harmonized by a rule that allows attacks on parole *procedures*, as long as a prisoner does not challenge a parole *outcome*. Opp. at 9. Respondents' purported "harmonization" of the split suffers at least two major flaws. First, by relying solely on the procedure/outcome distinction, Respondents essentially eliminate the "invalidity" issue, even though *Balisok* said

that even *procedural* claims are barred if they "imply the invalidity" of a parole decision. *See Balisok*, 520 U.S. at 646. All that a prisoner need do, to satisfy Respondents' (and the Sixth Circuit's) rule, is stop short of asking the federal court for reversal-on-the-merits of the parole decision. Second, Respondents' suggested harmonization fails because the cases show a clear legal split that cannot be explained away by factual differences.

The Ninth Circuit's *Butterfield* decision perhaps best demonstrates both flaws in Respondents' attempt to harmonize the split. That case both illustrates the problem with Respondents' proffered procedure/outcome distinction, and is also irreconcilable with the decision below. Respondents assert that Butterfield "challenged the outcome reached by the parole board." Opp. at 10. But *Butterfield* was a purely procedural challenge, as the prisoner claimed that false information was included in his parole file, and he sought "money damages rather than parole as a remedy." *Butterfield*, 120 F.3d at 1025. He did not even appear to demand a new parole *hearing*, let alone a court-ordered reversal of the outcome.

The Ninth Circuit nevertheless rejected Butterfield's procedural challenge, holding that any "challenge to the *procedures* used in the denial of parole *necessarily implicates the validity of the denial of parole*," and is thus barred. *Butterfield*, 120 F.3d at 1024 (emphasis added). Under *Butterfield*, then, the "implication of invalidity" does not turn on whether a prisoner seeks to "reverse" the outcome. Rather, *any* claim seeking a declaration that a particular decision was procedurally flawed *necessarily implies* the invalidity of the decision. Thus, the "fact that Butterfield [sought] money damages rather than parole as a remedy does not alter this conclusion." *Id.* at 1025.

Therefore, Respondents are wrong to say that Butterfield "challenged the outcome" of his parole denial, and that success on his claim "would have invalidated the parole decision." Opp. at 10. The only sense in which Butterfield challenged the decision's "outcome" or "validity" is in the sense that his claim sought a declaration that the process was flawed. But, thus understood, *Butterfield* would bar Respondent Johnson's claim, as he not only wants a declaration that his hearing was flawed, but he seeks a new hearing. Conversely, Butterfield would surely be allowed to pursue his claim in the Sixth Circuit, as he did not seek "automatic early release," but wanted only damages. These irreconcilable holdings demonstrate a clear circuit split.

Moreover, the Tenth Circuit also bars claims that *imply* the invalidity of a parole decision, based on procedural flaws, even where the prisoner seeks only damages, not early release or a new hearing. *Vann*, 28 Fed. Appx. at 864 (damages claim barred because it "would necessarily cast doubt on the parole decision itself"); *Waeckerle v. Oklahoma*, 37 Fed. Appx. 395 (10th Cir. 2002) ("civil claim for damages amount[ed] to a collateral attack" on the parole decision). Respondents argue that these claimants, too, attacked the "outcome" of their parole decisions, but they did so only in the sense that a successful damages claim *implies* a flawed decision; they did not ask for the decisions to be set aside. Surely the Tenth Circuit would not allow claims such as Respondents' to proceed; conversely, the Sixth Circuit's "early release" test allows damages-only claims to proceed.

In sum, the circuit split is real, with consequences for prisoners and prison officials alike, and it should be resolved.

CONCLUSION

For the reasons above and in the Petition, the Petition should be granted.

Respectfully submitted,

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